

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN THE MATTER OF THE COMPLAINT	§	
OF MS "ORION J"	§	
SCHIFFFAHRTSGESELLSCHAFT UG	§	
(HAFTUNGSBESCHRANKT) & CO. KG,	§	CASE NO. 4:14-cv-1411
JMS FOURTY-FIFTH SHIPPING CO. LTD.;	§	
AND JUNGERHANS HEAVY-LIFT-FLEET	§	
SERVICES GMBH & CO. KG, AS OWNER,	§	
OWNER <i>PRO HAC VICE</i> AND MANAGING	§	
OWNER, RESPECTIVELY, OF THE M/V	§	
INDUSTRIAL DAWN, FOR EXONERATION	§	
FROM OR LIMITATION OF LIABILITY	§	(ADMIRALTY)

INDUSTRIAL MARITIME CARRIERS LLC AND
INDUSTRIAL MARITIME CARRIERS (BERMUDA), LTD.'S
CLAIM IN THE COMPLAINT FOR EXONERATION FROM OR LIMITATION OF LIABILITY

NOW INTO COURT, through undersigned counsel, comes Claimant, Industrial Maritime Carriers LLC and Industrial Maritime Carriers (Bermuda), Ltd. and pursuant to Rule F(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims, file their Claim in the Complaint for Exoneration From and/or Limitation of Liability filed by Complainant, MS "ORION J" Schiffahrtsgesellschaft UG (Haftungsbechränkt) & Co. KG, JMS Forty-Fifth Shipping Co. Ltd., and Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG, as owner and/or operator of the M/V INDUSTRIAL DAWN, as follows:

1. Industrial Maritime Carriers LLC was at all material times a limited liability company registered in the State of Louisiana and engaging in business within the jurisdiction of this Honorable Court.

2. Industrial Maritime Carriers (Bermuda), Ltd. was at all material times a business entity organized and existing under the laws of Bermuda, an engaging in business within the jurisdiction of this Honorable Court.

3. MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbechränkt) & Co. KG was at all material times a business entity organized and existing under the laws of Germany with its principal office located in Haren (Ems), Germany.

4. JMS Forty-Fifth Shipping Co. Ltd. was at all material times a business entity organized and existing under the laws of Antigua with its principal office located in St. Johns, Antigua.

5. Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG was at all material times a business entity organized and existing under the laws of Germany with its principal office located in Haren (Ems), Germany.

6. At all material times:

- MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbechränkt) & Co. KG was the registered owner of the M/V INDUSTRIAL DAWN;
- JMS Forty-Fifth Shipping Co. Ltd. was the bareboat charterer of the M/V INDUSTRIAL DAWN;
- Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG managed the M/V INDUSTRIAL DAWN;

7. On April 11, 2014 a BIMCO Heavy Lift Voyage Charter Party (“Voyage CP”) was entered between Industrial Maritime Carriers LLC and Rowan Deep Water Drilling (Gibraltar) Limited with respect to the movement of cargo described as an “LMRP” and a blow out preventer (“BOP”). The loading port was Houston, Texas and the discharging port was intended to be Ulsan, South Korea. The M/V INDUSTRIAL DAWN (originally named “ORION J,” the registered owner of which was MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbeschränkt) & Co. KG and being managed by Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG) was operating on a Time Charter described as a Government Form and

approved by the New York Produce Exchange (“Time Charter”) with Industrial Maritime Carriers (Bermuda), Ltd.

8. On or about May 10, 2014, during the course of the heavy lift by the vessel’s crew from a barge to the M/V INDUSTRIAL DAWN, the BOP and its shipping skid became disconnected from the lifting traverse causing the BOP to fall and strike a longshoreman working in the hold, Gabriel Garcia. Garcia’s injuries ultimately proved fatal.

9. The accident further caused delays due to the U.S. Coast Guard and OSHA investigation and the need to obtain lifting capacity to remove the BOP from its post-casualty position aboard the M/V INDUSTRIAL DAWN. Further, more time was required to reload the BOP aboard the vessel after an inspection and determination by the cargo owner that the BOP could proceed to its intended port. The M/V INDUSTRIAL DAWN ultimately set sail with the cargo on May 28, 2014, approximately 17 days later than the planned departure date.

10. At all material times, MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbeschränkt) & Co. KG, JMS Forty-Fifth Shipping Co. Ltd., and Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG had full dominion, operation and control over the M/V INDUSTRIAL DAWN, including but not limited to, the manning, crewing, operation, and maintenance of the M/V INDUSTRIAL DAWN and its equipment. MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbeschränkt) & Co. KG, JMS Forty-Fifth Shipping Co. Ltd., and Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG were further obligated to comply with all applicable laws and regulations with respect to the operation, use, manning, and maintenance of the M/V INDUSTRIAL DAWN.

11. On May 10, 2014, the M/V INDUSTRIAL DAWN was under the exclusive care, custody, and control of MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbeschränkt) & Co.

KG, JMS Forty-Fifth Shipping Co. Ltd., and Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG and its master, Rufino L. Abogado, Jr.

12. The May 10, 2014 accident and/or the damages incurred as a result of the accident were not caused or contributed to by any fault, negligence, or lack of due care on the part of Industrial Maritime Carriers LLC or Industrial Maritime Carriers (Bermuda), Ltd., or any person employed by Industrial Maritime Carriers LLC or Industrial Maritime Carriers (Bermuda), Ltd. or for whom they are responsible.

13. MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbechränkt) & Co. KG, JMS Forty-Fifth Shipping Co. Ltd., and Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG knew, or in the exercise of reasonable diligence should have known, that the M/V INDUSTRIAL DAWN and/or the vessel’s equipment was not in good and working order. Further, the failure MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbechränkt) & Co. KG, JMS Forty-Fifth Shipping Co. Ltd., and Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG to maintain the vessel’s equipment in good and working order was the cause of the accident on May 10, 2014.

14. The negligence of MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbechränkt) & Co. KG, JMS Forty-Fifth Shipping Co. Ltd., and Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG in maintaining the vessel’s equipment has caused Industrial Maritime Carriers LLC to sustain damages, including but not limited to the following:

- (a) Expenses associated with the handling of the cargo subsequent to the casualty;
- (b) Any amounts subsequently held to be payable to the cargoes’ interests;
- (c) Loss of earnings and other liabilities; and
- (d) Other damages to be proven at trial in this matter.

15. The damages sustained by Industrial Maritime Carriers LLC, which are in excess of \$93,970.00, were directly and proximately caused by MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbechränkt) & Co. KG, JMS Forty-Fifth Shipping Co. Ltd., and Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG’s failure to maintain the equipment aboard the M/V INDUSTRIAL DAWN, and therefore MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbechränkt) & Co. KG, JMS Forty-Fifth Shipping Co. Ltd., and Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG is liable to Industrial Maritime Carriers LLC for all losses sustained.

16. The negligence of MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbechränkt) & Co. KG, JMS Forty-Fifth Shipping Co. Ltd., and Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG in maintaining the vessel’s equipment deprived Industrial Maritime Carriers (Bermuda), Ltd. of the use of the vessel, and delayed the vessel’s sailing. This has caused Industrial Maritime Carriers (Bermuda), Ltd. to sustain damages, including but not limited to the following:

- (a) The additional costs of fuel and consumption of bunkers while the vessel was detained in Houston, Texas;
- (c) Loss of earnings and other liabilities;
- (d) Other damages to be proven at trial in this matter.

17. The damages sustained by Industrial Maritime Carriers (Bermuda), Ltd., which exceed the minimum jurisdictional limits of this Court, were directly and proximately caused by MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbechränkt) & Co. KG, JMS Forty-Fifth Shipping Co. Ltd., and Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG’s failure to maintain the equipment aboard the M/V INDUSTRIAL DAWN, and therefore MS “ORION J” Schiffahrtsgesellschaft UG (Haftungsbechränkt) & Co. KG, JMS Forty-Fifth Shipping Co. Ltd.,

and Jüngerhans Heavy-Lift-Fleet Services GmbH & Co. KG is liable to Industrial Maritime Carriers (Bermuda), Ltd. for all losses sustained.

WHEREFORE, Industrial Maritime Carriers LLC and Industrial Maritime Carriers (Bermuda), Ltd., pray that after due proceedings are had, that Industrial Maritime Carriers LLC and Industrial Maritime Carriers (Bermuda), Ltd. have judgment entered in their favor for all amounts shown at trial, as well as other expenses and charges that may accrue, together with pre-judgment interest, costs, and attorneys' fees. Industrial Maritime Carriers LLC and Industrial Maritime Carriers (Bermuda), Ltd. further prays for all other general and equitable relief to which they may be entitled.

Respectfully submitted,

/s/ Thomas J. Smith

Thomas J. Smith
State Bar No. 00788934
Federal Bar No. 23773
Kelly C. Hartman
State Bar No. 24055631
Federal Bar No. 777411
Shannon L. Snider
State Bar No. 24081157
Federal Bar No. 1515122

OF COUNSEL:
GALLOWAY, JOHNSON, TOMPKINS
BURR & SMITH
1301 McKinney Suite 1400
Houston, Texas 77010
(713) 599-0700 – Telephone
(713) 599-0777 – Facsimile
**ATTORNEYS FOR CLAIMANT,
INDUSTRIAL MARITIME CARRIERS LLC**

CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of Court using the ECF system, which sent notification to all counsel of record of such filing on August 1, 2014:

Robert L Klawetter
Christina K. Schovajsa
Eastham, Watson, Dale & Forney, L.L.P.
808 Travis Street,
Suite 1300
Houston, TX 77002
Attorneys for Complainants

/s/ Thomas J. Smith

Thomas J. Smith
Kelly C. Hartman
Shannon L. Snider